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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/778,762

02/08/2001

Marcio Marc Abreu

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EXAMINER

NAJARIAN, LENA

ART UNIT

PAPER NUMBER

3686

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/778,762	<b>Applicant(s)</b> ABREU, MARCIO MARC	
	<b>Examiner</b> LENA NAJARIAN	<b>Art Unit</b> 3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the amendment filed 3/16/09. Claim 66 has been amended. Claim 66 is pending.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable David et al. (5,544,649) in view of Madsen et al. (5,853,377), and further in view of Kapp (US 2001/0001144 A1).

(A) Referring to claim 66, David discloses a device for acquiring data comprising (abstract of David):

an input device continuously monitoring an individual for acquiring and transmitting real-time biological data of the individual at different points in time over an extended time frame (col. 5, lines 1-37 of David);

a processor, said processor receiving the real-time biological data of the individual from the input device (col. 10, line 60 – col. 11, line 15 and col. 12, lines 27-47 of David); and

a memory connected to the processor, said memory storing a program for determining a particular disease based upon the real-time biological data and for controlling operation of the processor (col. 12, lines 27-47 and col. 6, lines 10-16 of David);

said processor being operative with the program in the memory to receive the real-time biological data of the individual and to analyze the biological data to determine the particular disease, and said real-time biological data and the particular disease being compared by the processor to constantly updated medical information transmitted to the processor to determine if the real-time biological data received is of a predetermined degree of a life-threat to the individual based upon the particular disease, the processor providing a warning of the predetermined degree of threat to life determined by the comparison performed by the processor for the particular disease (col. 12, lines 27-47, col. 6, lines 10-16, col. 21, line 63 – col. 22, line 6, and col. 7, lines 52-61 of David);

the input device including a blood pressure measuring device (col. 9, lines 42-56 of David).

David does not expressly disclose a bi-directional communications link to the individual to send one of different levels of medical emergency warning to the individual

by different communication devices, said biological data being compared by the processor to medicinal and other products used by the individual, said medicinal and other products used by the individual being compared by the processor to the constantly updated medical information to determine life-threats, the input device transmitting data to a distributed computer network, and said input device allowing entry of the medicinal and other products used by the individual for comparison by the processor against the real-time biological data of the individual and the constantly updated medical information transmitted to the processor for the particular disease.

Madsen discloses a bi-directional communications link to the individual to send one of different levels of medical emergency warning to the individual by different communication devices (abstract, Fig. 1, and col. 4, lines 17-46 of Madsen).

Kapp discloses said biological data being compared by the processor to medicinal and other products used by the individual, said medicinal and other products used by the individual being compared by the processor to the constantly updated medical information to determine life-threats (para. 61 and para. 63 of Kapp), the input device transmitting data to a distributed computer network (para. 58 of Kapp), and said input device allowing entry of the medicinal and other products used by the individual for comparison by the processor against the biological data of the individual and the constantly updated medical information transmitted to the processor for the particular disease (para. 12 and para. 61 of Kapp).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Madsen and Kapp within David. The motivation for doing so would have been for the patient to be immediately notified of the status of his health (abstract of Madsen) and to minimize clinical liability for adverse drug reactions (para. 12 of Kapp).

Insofar as the claim recites "one of," it is immaterial whether or not the other elements are also disclosed.

### ***Response to Arguments***

4. Applicant's arguments with respect to claim 66 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LENA NAJARIAN whose telephone number is (571) 272-7072. The examiner can normally be reached on Monday - Friday, 9:30 am - 6:00 pm.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/L. N./  
Examiner, Art Unit 3686  
In  
5/28/09

/Gerald J. O'Connor/  
Supervisory Patent Examiner  
Group Art Unit 3686